



## **DEPARTMENT OF THE TREASURY**

### **31 CFR Part 50**

#### **Terrorism Risk Insurance Program; Updated Regulations in Light of the Terrorism Risk Insurance Program Reauthorization Act of 2019, and for Other Purposes**

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing proposed rules to implement technical changes to the Terrorism Risk Insurance Program (TRIP or Program) required by the Terrorism Risk Insurance Program Reauthorization Act of 2019 (2019 Reauthorization Act), and to update links to the Program’s website, where additional information relating to the administration of the Program is located for public reference. In addition, Treasury is proposing rules to: clarify the manner in which Treasury will calculate “property and casualty insurance losses” for purposes of considering certification of an act of terrorism, and “insured losses” when administering the financial sharing mechanisms under the Program, including the Program Trigger and Program Cap; and incorporate into the Program rules prior guidance provided by Treasury in connection with stand-alone cyber insurance under the Program. Treasury also seeks further public comment concerning the certification process under the Program, and the participation of captive insurers in the Program, to facilitate further analysis and study by the Federal Insurance Office (FIO) of the Program and potential future rulemakings in these areas.

**DATES:** Comments must be in writing and received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Early submissions are encouraged.

**ADDRESSES:** Please submit comments electronically through the Federal eRulemaking Portal: <http://www.regulations.gov>, or by mail (if hard copy, preferably an original and two copies) to the Federal Insurance Office, Attention: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with “2019 TRIA Reauthorization Proposed Rules Comments.” Please include your name, organizational affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

In general, comments received will be posted on <http://www.regulations.gov> without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-2922, or Lindsey Baldwin, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-3220.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Terrorism Risk Insurance Act (TRIA)<sup>1</sup> was enacted following the attacks on September 11, 2001 to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to help private markets stabilize and build insurance capacity to absorb any future losses for terrorism events. TRIA requires insurers to “make available” terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses) and provides for shared public and private compensation for such insured losses. Under TRIA, the Secretary of the Treasury administers the Program, with the assistance of FIO.

The Program was originally scheduled to terminate on December 31, 2005, but it was extended several times between 2005 and 2015.<sup>2</sup> Most recently, on December 20, 2019, President Trump signed into law the 2019 Reauthorization Act.<sup>3</sup> Section 502 of that Act extends the Program’s termination date to December 31, 2027. The risk-sharing mechanisms for calendar year 2020 remain constant for the entire reauthorization period, and are not modified by the 2019 Reauthorization Act.<sup>4</sup>

Treasury is issuing this notice of proposed rulemaking to align certain dates in the Program regulations with the 2019 Reauthorization Act. Treasury is also taking this opportunity to update links to the Program website in the regulations.

Treasury is also proposing several changes in response to a recent report by the Government Accountability Office (GAO) addressing certain sources of risk and uncertainty

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<sup>1</sup> 15 U.S.C. 6701 note.

<sup>2</sup> Terrorism Risk Insurance Extension Act of 2005, Public Law 109-144, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110-160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114-1, 129 Stat. 3.

<sup>3</sup> Public Law 116-94, 133 Stat. 2534, Title V.

<sup>4</sup> TRIA, sec. 103(e)(1)(B)(vi).

related to the Program.<sup>5</sup> In the report, GAO indicated that, based upon its engagement with stakeholders during the preparation of the report, some uncertainty may exist about how Treasury would factor in policyholder retention amounts in calculating “property and casualty insurance losses” versus “insured losses” to determine the Program certification threshold, Program Trigger, and Program Cap.<sup>6</sup> GAO recommended that Treasury provide further clarification to “prevent uncertainty in the insurance market and potential litigation following a terrorist event that could delay insurance payments and economic recovery.”<sup>7</sup> Treasury agrees that the reduction of uncertainty is an important goal. Accordingly, Treasury proposes certain rule changes designed to clarify how Treasury will apply these defined terms to effectuate the intent and goals of the Program.

Treasury is also proposing certain changes based on previous Treasury guidance regarding cyber coverage. In December 2016, Treasury issued interim guidance confirming that certain stand-alone cyber coverage written in a TRIP-eligible line of insurance was within the scope of the Program, such that insurers were obligated to adhere to the “make available” and disclosure requirements under TRIA for such coverage.<sup>8</sup> Treasury is proposing certain definitional changes to incorporate the cyber coverage guidance in the Program regulations.

While Treasury seeks comments from interested parties and the public on all aspects of the proposed rules, it particularly seeks comments on issues related to the certification process and the participation of captive insurers in the Program. Comments received will inform

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<sup>5</sup> GAO, *Terrorism Risk Insurance: Program Changes Have Reduced Federal Fiscal Exposure* (GAO-20-348) (April 2020), <https://www.gao.gov/assets/710/706243.pdf>.

<sup>6</sup> *Id.* at 18-19.

<sup>7</sup> *Id.* at 19.

<sup>8</sup> Guidance Concerning Stand-Alone Cyber Liability Insurance Policies Under the Terrorism Risk Insurance Program, 81 FR 95312 (Dec. 27, 2016) (Cyber Guidance), <https://www.federalregister.gov/documents/2016/12/27/2016-31244/guidance-concerning-stand-alone-cyber-liability-insurance-policies-under-the-terrorism-risk>.

additional analyses concerning the Program and potential future rulemakings. Treasury has determined to further review these topics partly in response to a May 2020 report<sup>9</sup> issued by the Advisory Committee on Risk-Sharing Mechanisms (ACRSM), which was established under the 2015 Reauthorization Act to provide advice, recommendations, and encouragement to Treasury for the creation and development of non-governmental, private market risk-sharing mechanisms to protect against losses arising from acts of terrorism.<sup>10</sup> The ACRSM Report identifies a number of Program areas for further action and study by Treasury, including Treasury's existing rules governing the certification process as well as the participation within TRIP of captive insurers and other alternative carrier mechanisms.<sup>11</sup>

The changes are explained below in the context of the proposed rules.

## **II. Program Regulations**

Rules establishing general provisions implementing the Program, including key definitions, and requirements for policy disclosures and mandatory availability, can be found in Subparts A, B, and C of 31 CFR part 50. Treasury's rules applying provisions of the Act to state residual market insurance entities and state workers' compensation funds are located at Subpart D of 31 CFR part 50. Rules addressing Treasury's data collection authorities are found at Subpart F of 31 CFR part 50. Subpart G of 31 CFR part 50 contains the Program's certification regulations. Rules setting forth procedures for filing claims for payment of the Federal share of compensation for insured losses are found at Subpart H of 31 CFR part 50. Subpart I of 31 CFR

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<sup>9</sup> Advisory Committee on Risk-Sharing Mechanisms, *Initial Report of the Committee* (May 11, 2020) (ACRSM Report), <https://home.treasury.gov/system/files/311/5-20-ACRSM-Report-Final.pdf>.

<sup>10</sup> Terrorism Risk Insurance Program Reauthorization Act of 2015, Pub. L. 114-1, 129 Stat. 3, § 110.

<sup>11</sup> In addition, GAO issued a separate report in April 2020 in which it recommended that Treasury consider further changes to the rules governing the certification process. See GAO, *Terrorism Risk Insurance: Market is Stable but Treasury Could Strengthen Communications about Its Processes* (GAO-20-364) (April 2020), <https://www.gao.gov/assets/710/706252.pdf>.

part 50 contains rules on audit and recordkeeping requirements for insurers, while Subpart J of 31 CFR part 50 addresses recoupment and surcharge procedures. Finally, Subpart K of 31 CFR part 50 contains rules implementing the litigation management provisions of TRIA, and Subpart L of 31 CFR part 50 addresses rules concerning the cap on annual liability under TRIA.<sup>12</sup>

### **III. The Proposed Rules**

This proposed rulemaking would revise 31 CFR part 50 to incorporate new dates pursuant to the 2019 Reauthorization Act. The proposed rules also provide an updated link to the Program's website. Finally, the proposed rules identify certain changes designed to clarify how Treasury will apply certain defined terms to effectuate the intent and goals of the Program and incorporate Treasury's prior guidance concerning stand-alone cyber coverage.

#### *B. Description of the Proposed Rules*

The changes to the existing rules at 31 CFR part 50 as provided for in these proposed rules, on a section-by-section basis, are as follows:

Subpart A — General Provisions

Section 50.1 — Authority, purpose, and scope.

The proposed change adds the 2019 Reauthorization Act to the statutory authority for the Program.

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<sup>12</sup> To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of TRIA, Treasury has also issued interim guidance to be relied upon by insurers until superseded by regulations.

## Section 50.4 – Definitions.

The proposed change to Section 50.4(b)(2)(ii) adds a sentence to the end of the subsection to clarify that, for purposes of calculating the threshold that must be reached before the Secretary may certify an *act of terrorism*, “property and casualty insurance losses” include amounts that are ultimately payable by the policyholder, as long as they arise under an insurance policy subject to the Program. “Property and casualty insurance losses” is thus broader than *insured loss*, as it is not limited to amounts “covered” under the policy. It includes all losses arising from claims associated with TRIP-eligible lines policies, whether or not the policyholder obtained terrorism risk coverage under that policy, or if the losses in question ultimately will be paid by the policyholder.

The \$5 million certification threshold in TRIA is based upon “property and casualty insurance losses,” a term that is not defined under the statute. By contrast, TRIA defines the term *insured loss*, which governs the calculation of the Program Trigger and the Program Cap, as “any loss resulting from an act of terrorism . . . that is covered by primary or excess property and casualty insurance issued by an insurer[.]”<sup>13</sup> The term *property and casualty insurance* is also defined under TRIA, and refers to all insurance subject to the Program.<sup>14</sup> Treasury also commonly refers to *property and casualty insurance* as the “TRIP-eligible lines of insurance.”

In practice, the certification analysis needed to accurately assess the size of an event involves calculating all losses associated with *property and casualty insurance* policies, regardless of whether the policyholder obtained terrorism risk coverage within the policy. The calculated amount would also include, for example, policy deductibles or fronting arrangements,

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<sup>13</sup> TRIA, sec. 102(5).

<sup>14</sup> TRIA, sec. 102(11).

even though the financial loss associated with these components will ultimately fall on the policyholder.<sup>15</sup> Accordingly, Treasury proposes to add language to Section 50.4(b)(2)(ii) to clarify that, for purposes of the certification analysis, “property and casualty insurance losses” include any losses associated with a *property and casualty insurance* policy, even if those losses are ultimately payable by the policyholder.

The proposed change to the definition of *insured loss* in Section 50.4(n) would add subsection (3)(iv) to clarify that *insured loss* does not include amounts that are paid by the policyholder under *property and casualty insurance* policies.

An *insured loss* under TRIA governs payments under the Program, including application of the Program Trigger and Program Cap. As noted above, it is defined as “any loss resulting from an act of terrorism . . . that is covered by primary or excess property and casualty insurance issued by an insurer[.]”<sup>16</sup> Insured losses “covered” means insured losses paid by insurers under insurance policies within the scope of the Program. This reading is consistent with TRIA’s intent, which is to provide a backstop for the losses of insurance companies. There is no mechanism under TRIA for policyholders to recover “insured losses” from Treasury.<sup>17</sup> If the *insured loss* of an insurer included the obligations of its policyholders, it could permit an insurer to achieve a double recovery of its losses.<sup>18</sup>

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<sup>15</sup> Treasury also addressed the potential parameters of the “property and casualty insurance losses” language in its 2015 report, The Process for Certifying an “Act of Terrorism” Under the Terrorism Risk Insurance Act of 2002 (Certification Report), at 6 ([https://www.treasury.gov/resource-center/fin-mkts/Documents/TRIP\\_Certification\\_Report.pdf](https://www.treasury.gov/resource-center/fin-mkts/Documents/TRIP_Certification_Report.pdf)).

<sup>16</sup> TRIA, sec. 102(5).

<sup>17</sup> See, e.g., TRIA, sec. 103(e)(1)(A) (“The Federal share of compensation under the Program to be paid by the Secretary for insured losses *of an insurer*.....”) (Emphasis added.).

<sup>18</sup> *Id.*, sec. 103(e)(1)(C) (prohibiting duplicative compensation where the Federal Government has through another program already provided compensation for the insured losses in question).



Although the *insured loss* definition under TRIA does not expressly exclude a deductible under a policy for which the policyholder will be responsible, such a deductible would not be “covered” by the insurer unless the policyholder failed to pay it.<sup>19</sup> TRIA bases the Federal share payment upon “all payments made for insured losses” by the insurer.<sup>20</sup> Therefore, for purposes of the Program Trigger and Program Cap, TRIA contemplates an *insured loss* definition that is limited to the actual losses sustained by the participating insurers. Accordingly, Treasury proposes to add a new subsection (3)(iv) to Section 50.4(n) to clarify that *insured loss* does not include amounts paid by policyholders as part of their retained obligations under TRIP-eligible lines policies subject to the Program.

The proposed change to Section 50.4(w) would incorporate into the Program rules the guidance provided by Treasury in December 2016. That guidance stated that stand-alone cyber liability insurance is subject to the Program, unless it is otherwise identified for state reporting purposes as a type of insurance that is not property and casualty insurance under the Program. In the guidance, Treasury also noted the uncertainty presented in some circumstances as to whether cyber liability insurance is within the scope of the Program, since it is often written as professional liability insurance, which is a type of insurance expressly excluded from TRIP.<sup>21</sup> Treasury observed, however, that the National Association of Insurance Commissioners (NAIC) had recently identified, for state purposes, an insurance product called “Cyber Liability” within

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<sup>19</sup> Insurance practices may make the insurer responsible for payment of a policy deductible to a third party, with the policyholder subject to the insurer’s claim for reimbursement of the deductible amount. By contrast, the policyholder must satisfy a self-insured retention obligation before any obligation on the part of the insurer is triggered under the policy. Thus, this issue would be limited to policyholder deductibles and not self-insured retentions, which could not be considered “property and casualty insurance issued by an insurer.” If an insurer paid a deductible that was not reimbursed by the policyholder (because of financial responsibility issues), Treasury could view such a payment as being within the definition of “insured loss” under “property and casualty insurance issued by an insurer.”

<sup>20</sup> TRIA, sec. 103(b)(5)(B)(ii).

<sup>21</sup> TRIA, sec. 102(11); *see* Cyber Guidance, 81 FR 95312-13.

the general scope of the Other Liability line of insurance, which is generally subject to the Program.<sup>22</sup>

Given that this is a type of insurance<sup>23</sup> within a line of insurance subject to the Program, and is not otherwise excluded in any fashion, Treasury confirmed in its guidance that such stand-alone cyber liability insurance is subject to the Program, and instructed participating insurers (to the extent they were not doing so already) to conform to the “make available” and disclosure requirements of TRIA with respect to such policies. Since the TRIA compliance periods identified in the guidance have now passed, there is no need to further modify the Program Rules to address the timing of when TRIA requirements for such insurance must be met.

Section 50.6 — Special rules for Interim Guidance safe harbors.

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<sup>22</sup> Cyber Guidance, 81 FR 95313; *see* NAIC, Uniform Property & Casualty Product Coding Matrix (effective Jan. 1, 2020), 10, [https://www.naic.org/documents/industry\\_pcm\\_p\\_c\\_2020.pdf](https://www.naic.org/documents/industry_pcm_p_c_2020.pdf).

<sup>23</sup> In one place in the Cyber Guidance, stand-alone cyber liability insurance was identified as, for reporting purposes, a sub-line of insurance within Other Liability, which is not the case, and the proposed rule does not incorporate such language.

The proposed change to Section 50.6(b) updates the reference to the Program’s website to the current address and deletes specific reference to now-obsolete prior Interim Guidance.

#### Subpart B — Disclosures as Conditions for Federal Payment

##### Section 50.16 — Use of model forms.

The proposed change to Section 50.16 updates the reference to the Program’s website to the current address.

#### Subpart C — Mandatory Availability

##### Section 50.20 — General mandatory availability requirements.

The proposed change provides that participating insurers must now comply with the “make available” requirement through December 31, 2027, as distinguished from December 31, 2020, given the Program extension provided for under the 2019 Reauthorization Act.

#### Subpart D — State Residual Market Insurance Entities; Workers’ Compensation Funds

##### Section 50.30 — General participation requirements.

The proposed change to Section 50.30 updates the reference to the Program’s website to the current address.

#### Subpart E — Self-Insurance Arrangements; Captives [Reserved]

Treasury continues to reserve Subpart E for future additional rules addressing the participation of self-insurance arrangements and captive insurers in TRIP. Treasury poses a

number of questions below concerning the participation of captive insurers in the Program, as to which it seeks comments from the public.

#### Subpart F — Data Collection

There are no proposed changes to Subpart F.

#### Subpart G — Certification

There are no proposed changes to Subpart G. Treasury poses a number of questions below concerning Treasury's certification process under its existing rules, as to which it seeks comments from the public.

#### Subpart H — Claims Procedures

##### Section 50.74 — Payment of Federal share of compensation.

The proposed change to Section 50.74 updates the reference to the Program's website to the current address.

#### Subpart I — Audit and Investigative Procedures

##### Section 50.83 — Adjustment of civil monetary penalty amount.

The proposed change to Section 50.83 updates the reference to the Program's website to the current address.

#### Subpart J — Recoupment and Surcharge Procedures

##### Section 50.90 — Mandatory and discretionary recoupment.

The proposed change to Section 50.90 identifies the new dates by which Treasury must collect mandatory recoupment amounts under the 2019 Reauthorization Act.

#### Subpart K — Federal Cause of Action; Approval of Settlements

##### Section 50.103 — Procedure for requesting approval of proposed settlements.

The proposed change to Section 50.103 updates the reference to the Program’s website to the current address.

#### Subpart L — Cap on Annual Liability

There are no proposed changes to Subpart L.

### **IV. Request for Comments Concerning Certification Process and Captive Insurers**

FIO periodically issues reports and proposes regulations to address and improve the efficiency and effectiveness of the administration of the Program.

FIO has also received recommendations from the ACRSM on certain issues. In its May 2020 report, the ACRSM made a number of suggestions concerning the certification process under TRIA, including matters concerning the treatment of cyber incidents, a potential petitioning procedure for a certification process, and further adjustment of the existing timeframes in the Program rules associated with the certification process.<sup>24</sup> Treasury invites the public to comment on the following issues:

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<sup>24</sup> ACRSM Report, 6, 27.

*Program's Treatment of Cyber Events Outside the United States:*

TRIA is generally limited (subject to certain defined exceptions) to acts of terrorism that “result[] in damage within the United States.”<sup>25</sup> The ACRSM has asked that FIO evaluate whether “cyber incidents that occur outside the U.S. with damage outside the U.S., but with impacts both inside and outside the U.S.” could be eligible for certification under the Program.

We request comment on:

- (a) Whether cyber events outside the United States can inflict cyber-related losses within the United States that qualify as “damage within the United States” for purposes of TRIA;
- (b) To the extent such cyber events can be said to inflict losses that qualify as “damage within the United States,” whether such losses may also be subject to compensation under the terrorism risk insurance pools or arrangements of other jurisdictions; and
- (c) How Treasury could evaluate such losses representing “damage within the United States” from a certification standpoint, particularly if the causative cyber events in question take place outside the United States.

*Certification Process:*

The ACRSM recommended that Treasury establish a petitioning procedure under the Program rules that would permit third parties to request that Treasury commence a certification process under its rules. We request comment on:

- (a) How such a procedure could be established consistent with TRIA;
- (b) What types of parties should be permitted to make such a petition to Treasury;  
and
- (c) The information that a prospective petitioner should be required to submit to inform Treasury that the certification requirements of TRIA have been met, including but not limited to whether property and casualty insurance losses have met the \$5 million certification threshold.

The ACRSM also recommended that Treasury consider whether the existing time periods and notification requirements under the certification process should be modified. Treasury invites comment on this proposal, while noting that it has previously acknowledged the difficulty of using prescriptive time periods or requirements in connection with the certification process.<sup>26</sup>

We request comment on:

- (a) How different time periods or notification requirements under the certification process could affect the administration of the Program and the terrorism risk insurance market; and
- (b) How any modifications to the existing time periods or notification requirements would be consistent with the flexibility that Treasury has previously indicated it needs for certification under various circumstances.

*Captive Insurers:*

Prior Treasury studies concerning the effectiveness of the Program have noted, in connection with analysis of the results of modeled loss questions posed by Treasury, that captive insurers have been projected to receive benefits in connection with those hypothetical loss events that are proportionally larger than those received by other insurance industry segments.<sup>27</sup> In addition, the ACRSM Report provides an example of how losses of a similar size could be reimbursed for such insurers as compared with conventional insurers that have a much larger direct earned premium base from which Program deductibles are calculated, and recommends that Treasury provide further transparency concerning the participation of captive insurers in the Program.<sup>28</sup> We request comment on:

(1) With respect to captive insurers:

- (a) Whether, in light of the size and operation of captive insurers and the current structure of TRIP, captive insurers are likely to obtain larger payments under the Program in a large loss event as compared to traditional insurers that assume similar risk exposures;
- (b) Whether there are administrative rule changes that could be made to the Program rules and administration for captive insurers that would result in recovery percentages for captive insurers that may be more consistent with those indicated in modeled loss analyses for other industry segments;

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<sup>27</sup> See Treasury, Report on the Effectiveness of the Terrorism Risk Insurance Program (June 2018), 47-53, [https://home.treasury.gov/system/files/311/2018\\_TRIP\\_Effectiveness\\_Report.pdf](https://home.treasury.gov/system/files/311/2018_TRIP_Effectiveness_Report.pdf); Treasury, Report on the Effectiveness of the Terrorism Risk Insurance Program (June 2020), 49-55, <https://home.treasury.gov/system/files/311/2020-TRIP-Effectiveness-Report.pdf>. Based upon the information available to FIO, this is likely because although captive insurers may insure large exposures of their policyholders, they tend to have smaller deductibles under the Program because of the small amount of their overall TRIP-eligible lines premiums.

<sup>28</sup> ACRSM Report, 6, 19-20.



- (c) Whether the Program should attribute some amount of captive parent revenues to captive insurers for TRIP deductible calculation purposes; and
  - (d) Whether changes to the Program structure for captive insurers could prevent policyholders (who may be unable to obtain terrorism risk insurance in the conventional market for a reasonable price) from obtaining such insurance from captive insurers.
- (2) Whether FIO should make public financial information regarding participating captive insurers, taking into account whether this additional transparency would be beneficial to the terrorism risk insurance market and the administration of TRIP. We request comment on:
- (a) The information that should and should not be made available to the public;
  - (b) The reasons for making (or not making) this type of information available to the public;
  - (c) Whether the publication of information on an individual company basis is consistent with the provisions of TRIA stating that Treasury should only obtain information from participating insurers in an anonymized fashion, and otherwise providing for the confidentiality of the information submitted;<sup>29</sup> and
  - (d) How making information publicly available concerning captive insurers could address, if at all, the issues presented by potentially disproportionate recoveries by captive insurers under TRIP, or otherwise assist FIO in the administration of the Program.
- (3) Any other issues regarding the participation of captive insurers in TRIP.

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<sup>29</sup> TRIA, sec. 104(h)(3), (5).

## **V. Procedural Requirements**

*Executive Order 12866, “Regulatory Planning and Review.”* This proposed rule is not a significant regulatory action for purposes of Executive Order 12866, “Regulatory Planning and Review,” and thus has not been reviewed by the Office of Management and Budget (OMB).

*Regulatory Flexibility Act.* Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Treasury must consider whether this rule, if promulgated, will have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). In this case, Treasury certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because the changes it proposes are largely ministerial and are not expected to impact small entities more than the existing Program regulations.

*Paperwork Reduction Act.* No collection of information is addressed in this proposed rule. Treasury continues to submit to OMB for review, under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d), material changes to existing collection requirements.

### **List of Subjects in 31 CFR Part 50**

Insurance, Terrorism.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR part 50 as follows:

### **PART 50 — TERRORISM RISK INSURANCE PROGRAM**

1. The authority citation for part 50 is revised to read as follows:

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107-297, 116 Stat. 2322, as amended by Pub. L. 109-144, 119 Stat. 2660, Pub. L. 110-160, 121 Stat. 1839, Pub. L. 114-1, 129 Stat. 3, Pub. L. 116-94, 133 Stat. 2534 (15 U.S.C. 6701 note), Pub. L. 114-74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

2. Amend § 50.1 by revising paragraph (a) as follows:

**§ 50.1 Authority, purpose, and scope.**

(a) *Authority.* This part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Public Law 107-297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109-144, 119 Stat. 2660, the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110-160, 121 Stat. 1839, the Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114-1, 129 Stat. 3, and the Terrorism Risk Insurance Program Reauthorization Act of 2019, Public Law 116-94, 133 Stat. 2534.

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3. Amend §50.4 by revising paragraphs (b)(2)(ii), (n)(3), (w)(1) and (w)(2) as follows:

**§ 50.4 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000. For these purposes, property and casualty insurance losses include any amounts subject to payment under a property and casualty insurance policy, even if the policyholder declined to obtain terrorism risk insurance under the policy or is otherwise

ultimately responsible for the payment.

\* \* \* \* \*

(n) \* \* \*

(3) \* \* \*

(iii) Payments by an insurer in excess of policy limits; or

(iv) Amounts paid by a policyholder as required under the terms and conditions of property and casualty insurance issued by an insurer.

\* \* \* \* \*

(w) \* \* \*

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 22—Aircraft (all perils); and Line 27—Boiler and Machinery; a stand-alone cyber liability policy falling within Line 17—Other Liability, is property and casualty insurance, so long as it is not otherwise identified for state reporting purposes as a policy that is not property and casualty insurance, such as professional liability insurance.

(2) Property and casualty insurance does not include:

\* \* \* \* \*

4. Amend § 50.6 by revising paragraph (b) as follows:

**§ 50.6 Special rules for Interim Guidance safe harbors.**

\* \* \* \* \*

(b) For purposes of this section, any Interim Guidance will be posted by Treasury at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>.

5. Amend § 50.16 by revising paragraph (c) as follows:

**§ 50.16 Use of model forms.**

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(c) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as revised in March 2020, or as subsequently modified by the NAIC, provided that Treasury has stated that usage by insurers of any such subsequently modified forms is deemed to satisfy the disclosure requirements of the Act and that the insurer uses the most current forms, so approved by Treasury, that are available at the time of disclosure. These forms may be found on the Treasury website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>.

6. Amend § 50.20 by revising paragraphs (b) and (c) as follows:

**§ 50.20 General mandatory availability requirements.**

\* \* \* \* \*

(b) *Compliance through 2027.* Under section 108(a) of the Act, an insurer must comply with paragraphs (a)(1) and (2) of this section through calendar year 2027.

(c) *Beyond 2027.* Notwithstanding paragraph (a)(2) of this section and §50.22(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2027, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

7. Amend § 50.30 by revising paragraph (c) as follows:

**§ 50.30 General participation requirements.**

\* \* \* \* \*

(c) *Identification.* Treasury maintains a list of state residual market insurance entities and state workers' compensation funds at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>. Procedures for providing comments and updates to that list are posted with the list.

8. Amend § 50.74 by revising paragraph (b) as follows:

**§ 50.74 Payment of Federal share of compensation.**

\* \* \* \* \*

(b) *Payment process.* Payment of the Federal share of compensation for insured losses will be made to the insurer designated on the Notice of Deductible Erosion required by § 50.72.

An insurer that requests payment of the Federal share of compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program> or otherwise will be made publicly available.

\* \* \* \* \*

9. Amend § 50.83 by revising paragraph (b) as follows:

**§ 50.83 Adjustment of civil monetary penalty amount.**

\* \* \* \* \*

(b) *Annual adjustment.* The maximum penalty amount that may be assessed under this section will be adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. 2461 note, by January 15 of each year and the updated amount will be posted in the FEDERAL REGISTER and on the Treasury website at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>.

10. Amend § 50.90 by revising paragraph (c) as follows:

**§ 50.90 Mandatory and discretionary recoupment.**

\* \* \* \* \*

(c) If the Secretary imposes a Federal terrorism policy surcharge as provided in paragraph (a) of this section, then the required amounts, based upon the extent to which payments for the Federal share of compensation have been made by the collection deadlines in section 103(e)(7)(E) of the Act, shall be collected in accordance with such deadlines:

(1) For any act of terrorism that occurs on or before December 31, 2022, the Secretary shall collect all required amounts by September 30, 2024;

(2) For any act of terrorism that occurs between January 1 and December 31, 2023, the Secretary shall collect 35 percent of any required amounts by September 30, 2024, and the remainder by September 30, 2029; and

(3) For any act of terrorism that occurs on or after January 1, 2024, the Secretary shall collect all required amounts by September 30, 2029.

11. Amend § 50.103 by revising paragraph (a) as follows:

**§ 50.103 Procedure for requesting approval of proposed settlements.**

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at <https://home.treasury.gov/policy->



[issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program](#) following any certification of an act of terrorism

pursuant to section 102(1) of the Act.

\* \* \* \* \*

Dated: October 30, 2020.

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[FR Doc. 2020-24522 Filed: 11/9/2020 8:45 am; Publication Date: 11/10/2020]